VI. Trade Enforcement Activities

A. Enforcing Our Trade Agreements

Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when necessary. Vigorous enforcement enhances our ability to get the maximum benefit from our trade agreements, ensures that we can continue to open markets, and builds confidence in the trading system.

Since President Clinton took office in 1993, we have concluded nearly 300 trade agreements – including trade-related declarations that will lead to future agreements – to help open markets, address issues of increasing complexity, and create opportunity for Americans. The scope and coverage of our network of agreements has thus grown considerably, and heightened our emphasis on ensuring the full implementation of these agreements.

Consequently, we have devoted more attention and resources than ever before to ensuring that these agreements yield the maximum advantage in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open and predictable trading environment. In the broad sense, ensuring full implementation of our trade agreements is one of USTR's strategic priorities. We seek to achieve this goal through a variety of means, including:

- We assert U.S. rights through the mechanisms in the World Trade Organization, including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO Committees and Bodies charged with monitoring implementation and surveillance of agreements and disciplines.
- We vigorously monitor and enforce our bilateral agreements.
- We invoke U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance.
- We provide technical assistance to trading partners, especially in developing countries, to ensure that key agreements like the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule.
- Through NAFTA's trilateral work program, tariff acceleration and use, or threat of use, of NAFTA's dispute settlement mechanism, we seek to promote U.S. interests under that Agreement, including using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

Since 1993, the Administration has vigorously enforced U.S. rights by deploying all available trade enforcement tools at its disposal on more than 100 occasions – including the initiation of 29 investigations under Section 301 of the Trade Act of 1974. Through vigorous application of U.S. trade laws, and active use of WTO dispute settlement procedures, the Administration has effectively opened foreign markets to U.S. goods and services. The President has also used the incentive of preferential access to the U.S. market to encourage improvements in workers' rights and reform of intellectual property laws and practices in other countries. These enforcement efforts have resulted in major benefits to U.S. firms, farmers and workers.

To enforce the WTO agreements, the United States has been the world's most frequent user of dispute settlement procedures. In enforcing the WTO agreements, we have focused in particular on foreign practices that could pose serious problems to the international trading system if they proliferated in many markets. Therefore, the Clinton Administration has implemented an effective, strategic WTO enforcement plan – aimed not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world. The Administration has further demonstrated its commitment to enforce WTO agreements by imposing retaliatory trade measures against the European Union for its failure to comply with WTO rulings on bananas and on beef from cattle treated with hormones.

In the last 5 years, we have filed 49 complaints at the WTO, thus far settling favorably 10 cases and winning 13 others through WTO panels and the Appellate Body. We have won favorable settlements and panel victories in virtually all sectors, including manufacturing, intellectual property, agriculture and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy. For example:

- The United States has filed 13 complaints under WTO dispute settlement procedures to challenge foreign government practices affecting U.S. creative works and protection of U.S. intellectual property rights. On seven of those cases, we have already obtained favorable results, either by obtaining a satisfactory settlement or by prevailing in WTO dispute settlement proceedings. We reached prompt settlements with Japan on protection of sound recordings, with Portugal and Pakistan on patent protection, with Sweden on enforcement of its intellectual property laws, and with Turkey on taxation of foreign films. We also got favorable results from WTO dispute settlement rulings against Canada on magazines and against India on exclusive marketing rights on pharmaceutical and agricultural chemical products. These achievements demonstrate that the WTO dispute settlement mechanism has already had a significant impact on our ability to protect the creative works of U.S. citizens.

- 15 of our 49 complaints have involved agricultural products or enforcement of the WTO agreement on sanitary and phytosanitary measures – including cases involving our exports of fruit to Japan, pork and poultry to the Philippines, dairy products to Canada, high-fructose corn syrup to Mexico, beef to Korea, and grains, bananas and beef to the European Union.

These and other enforcement activities are explained in more detail in other sections of this Report. In particular, see the section on WTO Dispute Settlement in Chapter II.

USTR also works to ensure the most effective use of U.S. trade laws to complement our litigation strategy and to address problems that are outside the scope of the WTO and NAFTA. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights enforcement, "Super 301" for dealing with barriers that affect U.S. exports with the greatest potential for growth, Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems, and Title VII of the 1988 Act to address problems in foreign government procurement. The application of these trade law tools is described further below and in Chapter V on bilateral negotiations.

The renewal in 1999 of Super 301 and the Title VII government procurement review continues the Clinton Administration's long-standing commitment to opening markets multilaterally where possible and bilaterally where necessary. While the United States is creating opportunities to open markets multilaterally through the WTO, APEC, and the FTAA, the Administration also can use all of these trade laws to complement and reinforce its multilateral efforts.

To carry out this work as effectively as possible, USTR has added new personnel to carry out a larger enforcement workload, without compromising its efforts to negotiate further market access improvements in key markets. Specifically, we have created an Enforcement unit headed by an Assistant U.S. Trade Representative, and in FY 1998 Congress provided USTR with funds to hire seven new attorneys to handle the added volume of work at the WTO and elsewhere. We also work closely with the Customs Service and the Departments of Agriculture, Commerce, Labor, State and Treasury as well as other agencies involved in enforcement of trade laws and agreements.

1. WTO Dispute Settlement

1999 Activities

The WTO dispute settlement procedures continue to yield positive results for the United States. The United States prevailed in six cases that were argued before WTO dispute settlement panels or the WTO Appellate Body in 1999. Four of these six cases involved U.S. exports of agricultural products. We successfully challenged: (1) Japan's varietal testing requirements for imports of apples and other fruits; (2) Korea's discriminatory tax regime on distilled spirits; (3) Canada's export subsidies on dairy products; (4) Australia's export subsidies on automotive leather; (5) India's import bans and other quantitative restrictions on 2,700 tariff lines of agricultural and industrial goods; and (6) Mexico's antidumping action on imports of high-fructose corn syrup from the United States. These cases, which are more fully described in Chapter II, further demonstrate the utility of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations.

In 1999 the United States also sought and obtained WTO authorization to suspend concessions with respect to certain products from the European Union, as a result of the EU's failure to lift its ban on imports of U.S. meat, as well as its adoption of a new banana regime that perpetuates WTO violations previously identified by a WTO panel and the WTO Appellate Body. The arbitrators determined the levels of suspension to be $116.8 million and $191.4 million, respectively. Moreover, the United States successfully defended Section 301 of the Trade Act of 1974 against a challenge by the EU. A WTO panel rejected the EU's claim that section 301 is inconsistent with U.S. obligations under the WTO.

In addition to these significant accomplishments, the United States also filed eight new complaints under WTO dispute settlement procedures in 1999, regarding: (1) Korean measures affecting imports of fresh, chilled, and frozen beef; (2) Korean measures regarding government procurement practices for airport construction; (3) an Argentine safeguard measure on imports of footwear; (4) Canada's patent law; (5) Argentina's patent and test data protection for pharmaceuticals and agricultural chemicals; (6) French government subsidization of flight management systems for aircraft; (7) an EU regulation regarding protection of trademarks and geographical indications for agricultural products and foodstuffs; and (8) India's measures affecting trade and investment in the motor vehicle sector. See Chapter II for a description of each case.

2. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

The WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on subsidies. Among its various disciplines, the Subsidies Agreement provides remedies for subsidies affecting competition not only domestically, but also in the subsidizing government's market and in third country markets. Previously, the U.S. countervailing duty law was the only practical mechanism for U.S. companies to address subsidized foreign competition. However, the countervailing duty law focuses exclusively on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the multilateral remedies of the Subsidies Agreement provide an alternative tool to address distortive foreign subsidies that affect U.S. businesses in an increasingly global market place.

Section 281 of the Uruguay Round Agreements Act of 1994 sets out the responsibilities of USTR and the Department of Commerce (Commerce) in enforcing the United States' rights in the WTO under the Subsidies Agreement. USTR coordinates the development and implementation of overall U.S. trade policy with respect to subsidy matters, represents the United States in the WTO, including the WTO Committee on Subsidies and Countervailing Measures, and leads the interagency team on matters of policy. The role of Commerce's Import Administration is to enforce the countervailing duty law and, in accordance with responsibilities assigned by the Congress in the Uruguay Round Agreements Act (URAA), to spearhead the subsidies enforcement activities of the United States with respect to the disciplines embodied in the Subsidies Agreement. The Import Administration's Subsidies Enforcement Office (SEO) is the specific office charged with carrying out these duties.

The primary mandate of the SEO is to examine subsidy complaints and concerns raised by U.S. exporting companies and to monitor foreign subsidy practices to determine whether they are impeding U.S. exports to foreign markets and are inconsistent with the Subsidies Agreement. Once sufficient, relevant information about a subsidy practice has been gathered to permit the matter to be reliably evaluated, USTR and Commerce confer with an interagency team to determine the most effective way to proceed. It is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO. Remedies for violations of the Subsidies Agreement may, under certain circumstances, involve the withdrawal of a subsidy program or the elimination of the adverse effects of the program. In fact, a WTO dispute settlement panel recently ruled that, given the particular circumstances in a case involving Australian government subsidies for the export of

automotive leather, repayment in full of the prohibited subsidy was necessary in order to withdraw the subsidy in that case.

Of critical importance throughout 1999 has been the Administration's effort to minimize the adverse effects of the recent foreign economic crises on the U.S. economy, including through stepped-up identification and surveillance of foreign subsidy practices that may exacerbate trade frictions. One industry that experienced severe import competition last year was the steel industry. In response, the President announced Steel Action Programs in January and August 1999, which provided for, among other things, an in-depth study and report of subsidies and market-distorting trade barriers for steel and steel inputs. The SEO is charged with conducting an extensive examination of subsidies and other government actions which have led to market-distorting practices and trade barriers. SEO is preparing a report that outlines the results of this examination and offers recommendations, developed in coordination with USTR, on the most effective means to address these subsidies and market-distorting trade barriers. This report is expected to be issued in late spring, 2000.

More generally, the SEO also maintains an electronic database on foreign subsidies drawn from the subsidies information which Commerce has developed through years of conducting countervailing duty investigations. This database is now accessible through the Internet at http://www.ita.doc.gov/import_admin/records/esel. By providing this information in a centralized location, Commerce has given the U.S. trading community improved access to information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member country to another. The United States carefully monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, the Department of Commerce maintains a list of foreign antidumping and countervailing duty actions involving U.S. exporters. The list is accessible in the electronic library on the Department of Commerce's Import Administration Internet website at: http://www.ita.doc.gov/import_admin/records. The list provides information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. government agencies to monitor other Members' administration of antidumping and countervailing duty actions involving U.S. companies.

Over the past year, a WTO dispute settlement panel, established at the request of the United States, examined Mexico's final action imposing antidumping duties on U.S. exports of high fructose corn syrup. The panel recently concluded that Mexico's measure is inconsistent with WTO rules. U.S. officials also met with U.S. exporters of fresh and frozen beef, swine, and urea to discuss Mexico's antidumping investigations of those products. In Mexico's swine investigation, the United States conveyed its concern about this investigation in a letter to the Mexican Government.

The United States also has been closely monitoring antidumping and countervailing duty investigations of other countries. Bilateral discussions with the European Commission were held regarding the EU's antidumping investigation of large aluminum electrolytic capacitors from the United States. The investigation was ultimately concluded without the imposition of a final antidumping measure. U.S. officials also met with U.S. exporters concerning Taiwan's antidumping investigation of certain semiconductors, Brazil's antidumping investigation of insulin, and the People's Republic of China's antidumping investigation of newsprint. Other investigations being closely monitored are Chile's countervailing duty investigation of powdered milk and India's antidumping investigations of acrylic fibers and oxo alcohols.

Twice a year, WTO Members notify the WTO of all antidumping and countervailing duty actions they have taken during the preceding six-month period. The actions are identified in semi-annual reports submitted for discussion in meetings of the relevant WTO committees. Members also notify their preliminary and final determinations to the WTO on a semi-annual basis. Finally, Members are required to notify the WTO of changes in their antidumping and countervailing duty laws and regulations. These notifications are maintained in hard copy by USTR and the Import Administration, and are made available to interested parties and others who wish to be apprised of the specific details of foreign antidumping or countervailing duty proceedings, or the laws and regulations governing their administration. The documents are also accessible through the USTR and Import Administration web-site "links" to the WTO's web site.

B. U.S. Trade Laws

1. Section 301

Section 301 of the Trade Act of 1974, as amended (the Trade Act), is the principal U.S. statute for addressing foreign unfair practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and also may be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. For example, Section 301 may be used to obtain increased foreign market access for U.S. goods and services, to provide more equitable conditions for U.S. investment abroad, and to obtain more effective protection worldwide for U.S. intellectual property.

The USTR has initiated 119 investigations pursuant to Section 301 since the statute was first enacted in 1974. From 1993 through 1999, the USTR initiated 29 Section 301 investigations.

Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government policy or practice and take action. The USTR also may self-initiate an investigation. In each investigation the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires the USTR to use the dispute settlement procedures that are available under that agreement.

If the matter is not resolved by the conclusion of the investigation, Section 304 of the Trade Act

requires the USTR to determine whether the practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If the practices are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the USTR must determine whether action is appropriate and, if so, what action to take. The time period for making these determinations varies according to the type of practices alleged. Investigations of alleged violations of trade agreements with dispute settlement procedures must be concluded within the earlier of 18 months after initiation or 30 days after the conclusion of dispute settlement proceedings, whereas investigations of alleged unreasonable, discriminatory or unjustifiable practices (other than the failure to provide adequate and effective protection of intellectual property rights) must be decided within 12 months.

The range of actions that may be taken under Section 301 is broad and encompasses any action that is within the power of the President with respect to trade in goods or services or with respect to any other area of pertinent relations with a foreign country. Specifically, the USTR may: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

There were major developments in the following Section 301 investigations during 1999. (For those investigations involving WTO dispute settlement procedures, see Chapter II.)

Mexican Practices Affecting High Fructose Corn Syrup (HFCS) (301-118)

On May 15, 1998, the USTR initiated an investigation in response to a Section 301 petition filed by the Corn Refiners Association, Inc. with respect to certain acts, policies and practices of the Government of Mexico that affect access to the Mexican market for HFCS. In particular, the investigation concerned whether the Government of Mexico had encouraged an agreement between representatives of the Mexican sugar industry and the Mexican soft drink bottling industry to limit the soft drink industry's purchases of HFCS.

In May 1999, the USTR determined that it would be appropriate to explore further the nature and consequences of Mexican Government involvement in this matter. The USTR also determined that the United States would, as a high priority, continue consultations with the Government of Mexico on issues related to trade in HFCS, with the aim of securing fair and equitable market opportunities for U.S. producers. In tandem, the USTR used the WTO dispute settlement mechanism to successfully challenge Mexico's antidumping action on imports of HFCS from the United States. A WTO dispute settlement panel agreed with the United States that the imposition of antidumping duties on HFCS by the Government of Mexico violated WTO rules on antidumping measures. (See Chapter II for a description of that case.)

Practices of the Government of Canada and of the Province of Ontario Regarding Measures Affecting Tourism and Sport Fishing Practices (301-119)

On April 29, 1999, the USTR initiated an investigation in response to a Section 301 petition filed by the Border Waters Coalition Against Discrimination in Services Trade with respect to certain acts, policies and practices of the Government of Canada and the Province of Ontario regarding sport fishing and tourism. In particular, the investigation concerned whether Ontario impaired the ability of Minnesota tourist establishments (fishing resorts, fishing guides, outfitters, and others) to compete against their Canadian counterparts by prohibiting U.S. recreational fishermen from keeping their catch if the fishermen lodged on the Minnesota side of certain lakes that straddle the U.S.-Canadian border. The investigation also examined whether Canadian immigration officials required U.S. fishing guides to obtain Canadian work authorizations to guide fishing trips into Canada.

On November 5, 1999, the USTR announced the successful resolution of this matter. The Province of Ontario agreed to revoke the provincial measures under investigation. In addition, the Government of Canada agreed that the immigration measure under investigation would be reviewed by the NAFTA Temporary Entry Working Group. The USTR will continue to monitor implementation by the Government of Canada and the Province of Ontario of these measures and agreements.

EC - Importation, Sale, and Distribution of Bananas (301-100a)

Chapter II includes a report on WTO dispute settlement proceedings involving the EC's regime for the importation, sale, and distribution of bananas. On April 6, 1999, WTO arbitrators confirmed that the EC had failed to implement the recommendation and rulings of the WTO Dispute Settlement Body with respect to its banana regime, and the arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime was $191.4 million per year. Pursuant to the arbitrators' determination, on April 19, 1999 the DSB authorized the United States to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to $191.4 million per year. In a notice published on April 19, 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC member States, pursuant to Section 301. In the meantime, talks continue with the aim of reaching a mutually satisfactory solution to this longstanding dispute.

EC - Measures Concerning Meat and Meat Products (Hormones) (301-62a)

Chapter II includes a report on WTO dispute settlement proceedings regarding an EC directive prohibiting imports of animals, and meat from animals, to which certain hormones had been administered (the "hormone ban"). This measure had the effect of banning nearly all imports of beef and beef products from the United States. After a WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EC's WTO obligations – because the ban was not based on scientific evidence, a risk assessment, or relevant international standards – the EC was given until May 13, 1999, to implement the WTO rulings. However, the EC failed to do so. Accordingly, on May 17, 1999, and in accordance with U.S. rights under Article 22 of the DSU, the United States requested authorization from the DSB to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with the DSB recommendations and rulings, but it

objected to the level of suspension proposed by the United States. Pursuant to Article 22.6 of the DSU, the matter was referred to arbitration.

On July 12, 1999, the arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a notice published on July 27, 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC States. Meanwhile, discussions with the EC to resolve this matter are continuing.

Other Investigations Involving WTO Dispute Settlement

Chapter II includes information on the following Section 301 investigations that involve measures that are the subject of WTO dispute settlement proceedings filed by the United States: Canada - Practices Affecting Periodicals (301-102); India - Patent Protection for Pharmaceuticals and Agricultural Chemicals (301-106); Australia - Subsidies on Leather (301-107); Indonesia - Promotion of the Motor Vehicle Sector (301-109); Japan - Market Access Barriers to Agricultural Products (301-112); and Canada - Export Subsidies and Market Access for Dairy Products (301-113).

2. Super 301

On March 31, 1999, the President signed Executive Order 12901 re-instituting "Super 301" procedures. Those procedures direct the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. Under the Executive Order, an annual Super 301 report is to be issued on April 30 of each year.

The April 1999 Super 301 Report identified as key priorities the strategic enforcement of bilateral, regional, and multilateral obligations of our trading partners. The report did not identify any "priority foreign country practices" within the meaning of the Executive Order, but found that a number of practices warranted the initiation of WTO dispute settlement proceedings or other actions in the context of our bilateral trade relationships. In particular, the report announced dispute settlement cases on EU-Avionics, India- Auto TRIMS, and Korea - Barriers to the Import and Distribution of Foreign Beef. (Information on those disputes is provided in Chapter II.) The report also announced that USTR was developing additional information regarding the compliance of WTO Members with the WTO agreement on customs valuation, and that USTR would pursue dispute settlement consultations with countries that do not satisfactorily address U.S. concerns.

3. Special 301

The successful implementation of the "Special 301" program by the Clinton Administration has vastly improved intellectual property standards around the world. Publication of the Special 301 list warns a country of our concerns, and it warns potential investors in that country that their intellectual property rights may not be satisfactorily protected.

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act of 1994, under Special 301 provisions, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property

protection. Countries that have the most onerous or egregious acts, policies or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as "Priority Foreign Countries" (PFC).

Priority foreign countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act. USTR may not designate a country as a priority foreign country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

The USTR must decide whether to identify countries each year within 30 days after issuance of the National Trade Estimate Report. In addition, the USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

The USTR has created a "Priority Watch List" and "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection or enforcement or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

a. New Initiatives

On December 1, the President announced that USTR and the Department of Health and Human Services (HHS) will develop a cooperative approach on health-related intellectual property matters consistent with our goal of helping poor countries gain access to affordable medicines, especially for the continuing war against HIV/AIDS. Through this approach, we will ensure the application of U.S. trade law related to intellectual property, such as Special 301, remains sufficiently flexible to respond to legitimate public health crises. Under this new arrangement there will be a more direct interaction between USTR and HHS on health-related intellectual property issues. When a foreign government expresses concern that U.S. trade law related to intellectual property significantly impedes its ability to address a health crisis, USTR will seek substantive information from HHS on the health conditions prevailing in that country. This will enable USTR to ensure that the application of U.S. trade law related to intellectual property is sufficiently flexible to respond to public health crises, while also ensuring that the minimum standards of the WTO TRIPS Agreement are respected in these situations.

b. Ongoing Initiatives

USTR's overriding objective during this year with respect to the protection of intellectual property rights has been to secure full and timely implementation of the WTO TRIPS Agreement. To this end, the USTR announced as part of the April 1999 Special 301 Report that USTR would conduct a special out-of-cycle review to assess the progress made by developing countries toward full implementation of their TRIPS obligations. Under the TRIPS Agreement, developing countries were given a five-year transitional period, ending on January 1, 2000, during which to bring their intellectual property regimes into compliance.

A second focus of USTR activity has been addressing pirate production and distribution of optical media like CDs, Video CDs, digital videodiscs and CD-ROMs, including through the use of new tools like licensing for optical disc manufacturing facilities and import/export licensing for manufacturing equipment. Finally, USTR has continued its efforts to more effectively protect computer software, especially by promoting the use of only licensed software by foreign government agencies. Using as a model the 1998 Executive Order

issued by President Clinton, USTR engaged numerous other governments, particularly those in need of modernizing their software management systems or where concerns have been expressed about inappropriate government use, encouraging them to adopt similar decrees directing their own government agencies to maintain appropriate, effective procedures to ensure legitimate use of software.

c. Implementation of Special 301

The specific improvements resulting from Special 301 reviews have been documented in each annual Special 301 report. However, several notable developments over the past two years are highlighted below.

- A bilateral understanding was reached with South Africa under which both Governments reaffirmed their shared objective of fully protecting intellectual property rights under the WTO TRIPS Agreement, while addressing the health issues identified by South Africa. South Africa agreed that it would address health needs in a manner that fully protects intellectual property rights. As a result South Africa was removed from all Special 301 lists.

- Several years ago Bulgaria was one of Europe's largest sources of pirate music CDs, and a major cause of concern for the U.S. copyright industry. Through intensive negotiations and increased pressure under Special 301, we worked to raise awareness and concern about the problem in Bulgaria. Today, Bulgaria has almost totally eliminated pirate production of music CDs. As a result, Bulgaria was removed from all Special 301 lists this year.

- The Jordanian Government amended its laws relating to intellectual property, providing improved protection in accordance with TRIPS standards. Jordan also joined the Berne Convention, giving U.S. copyrighted works legal protection in Jordan. Jordan also was removed from all Special 301 lists.

- Mexico passed new anti-piracy legislation which is a key part of its overall enforcement initiative announced in 1998.

- The United States and Honduras concluded negotiation of a bilateral IPR agreement.

- In light of Paraguay's commitments in a Memorandum of Understanding signed on November 17, 1998, the United States concluded an investigation of the policies and practices of the Government of Paraguay concerning the protection and enforcement of intellectual property rights.

d. Implementation of Ongoing Initiatives

Since the launch of these initiatives significant progress has been made in each area.

TRIPS Implementation

Through initiation of dispute settlement procedures and regular consultations the following progress was made on TRIPS implementation issues.

- The Government of India enacted legislation and drafted implementing regulations establishing mailbox and exclusive marketing rights systems for pharmaceutical and agricultural chemical products.

- The Government of Sweden implemented amendments to its

copyright law which provide for provisional ex parte relief in civil cases allowing the United States and Sweden to announce the settlement of our WTO dispute settlement case.

- The Government of Denmark made progress toward finalizing its consideration of options to amend its copyright law to provide for provisional ex parte relief in civil cases pursuant to our WTO dispute settlement case.

- The Government of Greece closed additional television stations for piracy during on-going WTO dispute settlement consultations regarding television piracy.

- Ireland continued to make progress toward implementation of a comprehensive new copyright law, and also implemented separate legislation raising criminal penalties for copyright infringement.

Optical Media

The Hong Kong Special Administrative Region (HKSAR) passed a new copyright law addressing software decompilation and parallel imports, and also granted customs enhanced authority to seize suspected pirated goods. The government of Hong Kong imposed a licensing requirement for the import and export of machinery and equipment used for production of compact discs, video compact discs, or CD-ROMs. The HKSAR also passed legislation calling for registration and licensing for current and future optical media production facilities, with tough penalties for non-compliance. The Hong Kong legislature approved the "Prevention of Copyright Piracy" bill on March 25, 1999. The bill provides Hong Kong customs with the power to take stronger enforcement action against violators. Malaysia also undertook a series of constructive steps toward developing and implementing a regulatory regime to control pirate optical media production, and to strengthen manufacturing and retail level enforcement efforts.

Government Use of Software

Significant progress also has been made working with other governments to modernize their software management systems. This year the Governments of China, Colombia, Paraguay, Taiwan, Jordan and Thailand have all issued a high-level decree requiring the use of only legitimate software by government ministries.

USTR will again focus special attention in the 2000 Special 301 annual review on the progress countries have made toward addressing these three issues.

1999 Special 301 Review Announcements

On February 19, 1999, the USTR announced the results of out-of-cycle reviews of Hong Kong, Ecuador, Colombia, and Vietnam. Hong Kong was removed from the Watch List in recognition of its efforts during the previous year to address piracy. However, in view of continuing high piracy rates, the USTR called upon Hong Kong to take significant new steps in the near future to address the problem. Ecuador was maintained on the Priority Watch List, and Colombia and Vietnam were maintained on the Watch List.

On April 30, 1999, USTR announced the results of the Special 301 annual review. USTR identified 57 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. Of the 57, 16 trading partners were placed on the Priority Watch List and 37 on the Watch List. Seven of these 57 were named for out-of-cycle reviews: Israel, Kuwait, South Africa, Colombia, Poland, the Czech Republic, and Korea. In addition, USTR announced an out-of-cycle review to

assess Malaysia's progress toward substantially reducing pirated optical media production and export, and an out-of-cycle review of Hong Kong to assess progress toward reducing piracy rates. Paraguay and China were designated for "Section 306 monitoring" to ensure that both countries comply with the commitments made to the United States under bilateral intellectual property agreements. Intensive monitoring continued in 1999 through regular bilateral consultations with both governments. Finally, USTR used the Special 301 report to announce initiation of WTO consultations with Argentina, Canada and the European Union, bringing to 13 the number of intellectual property-related WTO complaints filed by the United States since 1996.

On December 1, 1999, the USTR announced removal of South Africa from the Special 301 Watch List, based on a bilateral understanding developed with South Africa under which both Governments reaffirmed their shared objective of fully protecting intellectual property rights under the WTO TRIPS Agreement, while addressing the health issues identified by South Africa. South Africa agreed that it would address health needs in a manner that fully protects intellectual property rights. USTR took this action as a result of this understanding, as well as other steps South Africa had taken and was taking to improve further the protection of intellectual property.

On December 10, 1999, the USTR announced that Jordan was removed from the Watch List as the result of an out-of-cycle review. In actions related to its accession to the WTO, the Government of Jordan passed a number of strong intellectual property laws laying the legal foundation for an effective intellectual property regime consistent with the TRIPS Agreement. The Government of Jordan also demonstrated its determination to ensure effective enforcement of the laws comprising Jordan's improved regime for protection of intellectual property. In making the announcement, the USTR noted that implementation and enforcement will be important benchmarks for future reviews.

On December 17, 1999, the USTR announced results of out-of-cycle reviews of Colombia, the Czech Republic, Hong Kong, and Malaysia. Colombia and the Czech Republic remained on the Watch List. Hong Kong and Malaysia remained off the list, but the USTR called upon Hong Kong to redouble its efforts to reduce piracy rates, and announced that USTR would continue to monitor Malaysia's progress toward substantially reducing pirated optical media production.

4. Telecommunications

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review, by March 31 of each year, the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the Section 1377 review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States: (1) is not in compliance with the terms of the agreement; or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country. An affirmative determination under Section 1377 must be treated as an affirmative determination of a violation of a trade agreement under Section 304(a)(1)(A) of the Trade Act of 1974.

Due in large part to the 1997 WTO Agreement on Basic Telecommunications, which came into effect on February 5, 1998, mutually advantageous market opportunities for U.S. telecommunications equipment and service suppliers expanded greatly in 1999. U.S. firms are establishing facilities-based affiliates in countries in Africa, the Americas, Asia-Pacific and Europe that are newly opened to competition; exports of U.S.

telecommunications and information technology equipment advanced at double-digit rates in many areas; and, retail prices for international calls made from the United States dropped virtually across the board, reaching the 10 to 20 cent per minute range for a number of highly competitive routes. The WTO Agreement also has been instrumental in opening markets to satellite services around the world. With many countries liberalizing their satellite regulations, revenue of the commercial satellite industry is projected to enjoy double-digit growth over the next decade. These trends are expected to continue as more countries open their markets to full international competition.

Interventions by U.S. officials on behalf of U.S. industry abroad, in instances where trading partners' WTO obligations are implicated, have increased and led in several instances to rapid resolution of complaints without resort to investigations under Section 1377. Notwithstanding this favorable trend, monitoring and enforcement activities under Section 1377 have increased substantially given that, pursuant to the 1997 WTO Basic Telecom Agreement, the number of trading partners subject to the annual review under Section 1377 includes the entire WTO membership. The number of countries singled out in public comments during 1999 increased correspondingly.

The 1999 review, which was completed on March 30, 1999, focused on implementation of bilateral and WTO commitments by the European Community and Member States, Mexico, Germany and Japan. In each case, substantial progress was made in meeting the concerns of U.S. industry. In each of these cases, out-of-cycle investigations or intensive monitoring and other activities continued throughout the year.

USTR's 1999 review of the European Community and Member States focused on the "third generation" (3G) mobile systems. Private sector and government representatives of the United States, Europe and other regions concluded in the International Telecommunication Union (ITU) in late-1999 a *five*-mode international recommendation for future 3G systems, which will allow all 3G systems to offer global roaming, high-speed data and Internet access, full-motion video and other sophisticated multimedia services. However, certain decisions in Europe (by the European Telecommunications Standards Institute (1/98), the European Council of Ministers (12/98) and the European Posts and Telecommunications Commission's European Radio Committee (11/99)) suggest a strategy to promote pan-European and global adoption of a system using only *two* of the five modes, which could disadvantage U.S. users as well as manufacturers and service suppliers in the United States, European and third country markets. European Commission officials, in bilateral discussions and in responses to a series of U.S. letters expressing concern, have pledged repeatedly that EU Member States will not exclude the possibility of licensing use of the other three modes of the ITU recommendation. Most, if not all, EU Member States that have already instituted authorization systems for 3G services, have hewed to this pledge.

USTR's 1999 out-of-cycle review under Section 1377 of Mexico's compliance with its WTO telecommunications commitments focused on Mexico's consultative policy review – which included participation by U.S.-affiliated and other Mexican carriers – of the reform of international service and domestic service regulations. Mexican regulations have yet to produce lower net domestic interconnection costs for new entrants, and the Mexican regulatory authority has yet to create confidence that Telmex (the dominant Mexican carrier and former monopoly operator) is not engaging in anticompetitive cross-subsidization of different telecom services. In addition, from July 1999, Telmex failed to provide private lines and circuits essential for many purposes, including

the provision of end-to-end private line service between the United States and Mexico. As a result, the out-of-cycle review under Section 1377 has been extended for decision on March 31, 2000, as part of the 2000 review.

USTR's 1999 out-of-cycle review under Section 1377 of Germany focused on that country's compliance with its WTO telecommunications commitments. The review found that German regulatory decisions in May 1999 did not endorse restrictive and potentially WTO-inconsistent proposals made by Deutsche Telekom (the dominant German carrier and former monopoly operator). However, the review also concluded that those decisions were not sufficient to prevent anticompetitive behavior by Deutsche Telekom until new interconnection arrangements applicable from March 1, 2000 are finalized. U.S. carriers have asserted to the U.S. Government that the German licensing regime and Deutsche Telekom's anticompetitive behavior continue to impede their efforts to provide service in Germany. On December 23, 1999, the German regulatory authority announced new interconnection rates and peak and off-peak hours that will apply until February 28, 2001. As a result, the out-of-cycle review under Section 1377 has been extended for decision on March 31, 2000, as part of the 2000 review.

Japan came under close scrutiny in the 1377 review for over-priced interconnection rates that effectively prevent competition in Japan's local market, as well as for prohibiting the routing of both domestic and international traffic via combinations of owned and leased network facilities. Japan committed to address these issues in the context of the Second Joint Status Report under the Enhanced Initiative on Deregulation and Competition Policy released in May 1999. Specifically, Japan agreed: (1) to take action to ensure that interconnection rates do not impair local competition; and (2) to permit carriers to combine owned and leased facilities to provide services. In addition, the United States is currently seeking concrete action by Japan to assure that substantial reductions in interconnection rates are achieved this year in line with Japan's 1998 pledge under the Enhanced Deregulation Initiative to reduce rates to competitive levels in the year 2000.

The USTR also has undertaken an active telecommunications equipment trade agreement program, a key aspect of which is the WTO Information Technology Agreement. Concluded in 1996, this Agreement set a five-year phase-out of tariffs for a broad range of information technology equipment among the world's leading exporters and importers of such goods. The USTR also has worked to reduce non-tariff barriers to trade in this heavily-regulated sector. For instance, as a result of the NAFTA telecommunications and standards chapters, we have harmonized telephone equipment standards in North America and streamlined procedures for equipment testing, lowering barriers and bolstering trade with two of our largest trading partners. Finally, mutual recognition agreements for telecommunications equipment trade concluded with Europe (1997), as well as the Asia-Pacific (1998) and Americas (1999) regions, will speed up necessary regulatory approvals and lower their costs.

5. Government Procurement

Title VII of the 1988 Omnibus Trade and Competitiveness Act, which expired on April 30, 1996, required the U.S. Trade Representative, through authority delegated by the President, to identify foreign countries that are signatories to the WTO Government Procurement Agreement (GPA) and are in violation of their GPA obligations. The USTR also was required to identify GPA signatories that met the statutory criteria for identification in areas not covered by the GPA, as well as non-signatories that met these criteria in any area of procurement. Those criteria were: (1) a significant and persistent pattern or practice of discrimination in government procurement

against United States goods and services; (2) identifiable harm to U.S. businesses; and (3) significant purchases by the United States Government of goods or services from that country. Finally, Title VII required identification of countries that are not signatories to the GPA and fail to apply transparent and competitive procurement procedures or to maintain and enforce effective prohibitions on bribery.

Title VII provided for consultations with countries whose practices were identified as discriminatory, and for appropriate Presidential action with regard to such countries if discrimination were not addressed within specified time frames. It required initiation of dispute settlement procedures established by the GPA for apparent violations of the GPA. With respect to discrimination in procurement not covered by the GPA, it authorized the imposition of procurement sanctions. On April 30, 1996, Title VII expired pursuant to a sunset provision, except with respect to identifications made on or before that date.

Viewing Title VII as an effective tool for addressing discriminatory foreign procurement practices, the Administration re-instituted the Title VII process through Executive Order 13116 of March 31, 1999. The Executive Order requires USTR to identify countries that: (1) are not in compliance with their obligations under the GPA, Chapter 10 of the North American Free Trade Agreement (NAFTA Chapter 10), or other agreements relating to government procurement to which those countries and the United States are parties; or that (2) maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

The Executive Order also mandates that USTR submit a report on the identified countries and practices to the Congressional committees of jurisdiction by April 30 (for the years 1999, 2000, and 2001), and publish these reports in the *Federal Register*. Within 90 days of the submission of the report, USTR must initiate under Section 301 of the Trade Act of 1974, as amended, an investigation with respect to any identified country unless USTR determines that a satisfactory resolution of the matter has been achieved.

From 1991-1996, the Office of the USTR conducted six annual reviews under Title VII. Two determinations remain outstanding from that period.

In 1993, Title VII sanctions were imposed against the EU and its Member States for discrimination against U.S. telecommunications products. Those sanctions remain in place today. In 1999, the EU advised the Administration that it had limited the application of the disputed provisions of its procurement regulations and suggested that the two sides seek to resolve the issue on that basis. The Administration will schedule bilateral consultations for that purpose in 2000.

In March 1996, USTR identified Germany for a "significant pattern or practice of discrimination" in the heavy electrical equipment sector. The Title VII Report noted a "pervasive institutional problem" with respect to Germany's implementation of a remedies system for challenging procurement decisions. Following a 60-day period of consultation provided for in the statute, the USTR formally identified Germany on July 1, 1996, but suspended imposition of sanctions until September 30, 1996, due to progress made in the consultations.

In October 1996, USTR announced that the German Cabinet had decided to propose legislation to reform the German procurement

system. As a result, USTR suspended imposition of sanctions pending implementation of the legislation. In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including with respect to bid challenge procedures. That legislation was signed and entered into effect on January 1, 1999. The Administration has advised the German government that it will continue to monitor implementation of the new law to ensure that it results in the necessary practical improvements in the German procurement system. On that basis, USTR will review the 1996 Title VII determination in 2000.

In 1999, based on the public responses to a *Federal Register* notice, consultations with the private sector, and its own information, the Administration determined that no countries met the criteria for Title VII identification at that time. However, our report took note of countries that, while not formally identified, are of ongoing concern with respect to U.S. market access because of their questionable government procurement practices. The report noted U.S. concerns with the discriminatory procurement practices of Korea's largest airport construction entity, which the Administration has challenged through WTO dispute settlement procedures. The WTO panel's report on that dispute will be issued in early 2000.

6. Antidumping Actions

Under the antidumping law, remedial duties are imposed on imported merchandise when the Department of Commerce determines that the merchandise is being dumped (sold at "less than fair value" (LTFV)) and the U.S. International Trade Commission determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the l979 Trade Act, the 1984 Trade Act, the 1988 Trade Act, and the 1994 Uruguay Round Agreements Act.

An antidumping investigation starts when a U.S. industry, or a representative filing on its behalf, submits a petition alleging with respect to certain imports the dumping and injury elements described above. If the petition meets the minium evidentiary requirement, Commerce initiates an antidumping investigation. Commerce also may initiate an investigation on its own motion.

After initiation, the USITC decides, within 45 days of the filing of the petition, whether there is a "reasonable indication" of material injury or threat of material injury to a domestic industry, or material retardation of an industry's establishment, "by reason of" the LTFV imports. If this preliminary determination by the USITC is negative, the investigation is terminated; if it is affirmative, the case shifts back to Commerce for preliminary and final inquiries into the alleged LTFV sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs to suspend liquidation of entries and require importers to post a bond equal to the estimated weighted average dumping margin.

If Commerce's final determination of LTFV sales is negative, the investigation is terminated. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the LTFV imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the Customs bonds released.

Upon request of an interested party, Commerce conducts annual reviews of dumping margins and subsidy rates pursuant to Section 751 of the

Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO Agreement on Antidumping.

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the terms of the NAFTA.

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998 and 46 in 1999. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 24 in 1995; 9 in 1996; 7 in 1997; 9 in 1998 and 21 in 1999.

7. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930. As with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

The CVD law's purpose is to offset certain foreign government subsidies benefitting imports into the United States. CVD procedures under Title VII are very similar to antidumping procedures. Commerce normally initiates investigations based upon a petition submitted by an interested party. The USITC is responsible for investigating material injury issues. The USITC must make a preliminary finding of a reasonable indication of material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination.

The number of CVD investigations initiated in and since 1986 are: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; and 11 in 1999. The number of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; and 7 in 1999.

8. Unfair Import Practices (Section 337)

Section 337 of the Tariff Act of 1930 makes it unlawful to engage in unfair acts or unfair methods of competition in the importation or sale of imported goods. Most Section 337 investigations concern alleged infringement of intellectual property rights, usually involving U.S. patents.

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve trial-type proceedings before a USITC administrative law judge. If the USITC finds a violation, it can order unfairly traded goods excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. Many Section 337

investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

In cases in which the USITC finds a violation of Section 337, it must decide whether certain public interest factors nevertheless preclude the issuance of a remedial order. Such public interest considerations include an order's effect on the public health and welfare, U.S. consumers, and the production of similar U.S. products.

If the USITC issues a remedial order, it transmits the order, determination, and supporting documentation to the President for policy review. Importation of the subject goods may continue during this review process, if the importer pays a bond set by the USITC. If the President takes no negative action within 60 days, the USITC's order becomes final. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit with possible appeal to the U.S. Supreme Court.

The USITC also is authorized to issue temporary exclusion or cease and desist orders prior to completion of an investigation if the USITC determines that there is reason to believe a violation of Section 337 exists.

In 1999, the USITC initiated nine Section 337 investigations, with no formal enforcement proceedings arising out of these investigations. During the year, the USITC issued three general exclusion orders covering imports from foreign firms, as well as twenty-three cease and desist orders to U.S. firms regarding their use or further sale of imported infringing products. The President permitted these exclusion and cease and desist orders to become final without presidential action in 1999.

9. Safeguard Actions (Section 201)

Section 201 of the Trade Act of 1974 provides a procedure whereby the President may grant temporary import relief to a domestic industry seriously injured by increased imports. Relief may be granted for an initial period of up to four years, with the possibility of extending the action to a maximum of eight years. Import relief is designed to redress the injury and to facilitate positive adjustment by the domestic industry, and may consist of increased tariffs, quantitative restrictions, or other forms of relief. Section 201 also provides for the granting by the President of provisional relief in cases involving "critical circumstances" or certain perishable agricultural products.

For an industry to obtain relief under Section 201, the United States International Trade Commission must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994 – the so-called "escape clause" – and the WTO Agreement on Safeguards.

As of March 1, 2000, the United States had safeguard measures in place on four imported products: wheat gluten, lamb meat, certain steel wire (wire rod) and circular welded carbon quality line pipe (line pipe).

Effective June 1, 1998, the President imposed quantitative restrictions on imports of wheat gluten for a period of 3 years and 1 day. Absent an extension, the measure will expire June 1,

2001. The measure applies to imports from all countries except Canada, Mexico, Israel, and CBI and Andean Trade Preference beneficiaries. Effective July 22, 1999, the President imposed a tariff-rate quota on imports of lamb meat, also for a period of 3 years and 1 day. The measure likewise applies to imports from all countries except Canada, Mexico, Israel, and CBI and Andean Trade Preference beneficiaries. Unless extended, the measure will expire on July 22, 2002. During 1999, the European Communities, and Australia and New Zealand requested formation of WTO dispute settlement panels to examine the U.S. safeguard measures on wheat gluten and lamb, respectively. USTR is defending the consistency of these actions under the WTO Safeguards Agreement.

Two Section 201 petitions were filed with the USITC during 1999, on imports of wire rod and line pipe. The wire rod petition was filed on January 12, 1999. On July 12, 1999, the USITC reported to the President that it was equally divided 3-3 in its wire rod injury determination; the USITC report included the remedy recommendations of the three Commissioners who made an affirmative injury determination. When the USITC is equally divided in its injury determination, Section 330(d)(1) of the Tariff Act of 1930 provides that the President may consider the determination of either group of USITC Commissioners as the determination of the USITC. On February 16, 2000, the President imposed a tariff-rate quota on imports of wire rod for a period of 3 years and 1 day effective March 1, 2000 on imports from all countries except Canada and Mexico. In the first year, steel wire rod from countries subject to the restriction will face additional duties of 10 percent once imports exceed 1.58 million net tons. In the second and third years, the quantity of imports exempt from the higher duty will increase by 2 percent a year and the level of the surcharge will decline by 2.5 percentage points a year. The safeguard action also includes a spacing mechanism designed to avoid a rush of shipments to the United States by importers seeking to avoid the new tariff surcharges. During each of the first three quarters of a quota year, any wire rod imports from countries subject to the tariff-rate quota that exceed one-third of the total in-quota quantity for that quota year will be subject to the tariff surcharge for that year. The remaining amount of the in-quota quantity may be imported in the fourth quarter without additional duties. In addition, the tariff-rate quota will not apply to a subset of wire rod products that U.S. firms do not produce in commercially significant quantities.

The line pipe petition was filed with the USITC on June 30, 1999. On December 22, 1999, the USITC reported to the President that it had made an affirmative injury determination in the investigation by a vote of 5-1. The report also included the remedy recommendations of the five USITC Commissioners who made an affirmative injury determination. On February 11, 2000, the President announced the imposition of import relief on imports of line pipe for a period of 3 years and 1 day, effective March 1, 2000. The import relief will take the form of an increase in duty of 19 percent. All countries will be able to exempt the first 9,000 short tons of line pipe imported into the United States from this increase in duty. The increase in duty will drop to 15 percent ad valorem in the second year and to 11 percent ad valorem in the third year.

10. Trade Adjustment Assistance

a. Assistance for Workers

The Trade Adjustment Assistance (TAA) program provides worker assistance through Title II of the 1974 Trade Act. Assistance includes trade adjustment allowances, training, job search and relocation allowances, plus reemployment services for workers adversely affected by increased imports. Initially authorized by the Trade Expansion Act of 1962, the program is scheduled to expire on September 30, 2001.

For workers to be certified as eligible to apply for TAA, the Secretary of Labor must determine that workers in a firm have become or are threatened to become totally or partially separated; that the firm's sales or production have decreased absolutely; and that increases in like or directly competitive imported products contributed importantly to the total or partial separation, and to the decline in the firm's sales or production.

The U.S. Department of Labor administers adjustment assistance to workers through the Employment and Training Administration (ETA). Workers certified for trade adjustment assistance are provided a certification of eligibility and may apply for TAA benefits at the nearest office of the State Employment Security Agency. The amendments require eligible workers to have completed training or be enrolled in training as a condition for receiving trade readjustment allowances. This requirement may be waived by the State if training is not feasible or not appropriate.

Fact-finding investigations were newly instituted for 2,500 petitions in fiscal year (FY) 1999. In FY 1999, 1,571 certifications or partial certifications were issued covering nearly 150,000 workers, whereas 781 petitions involving 81,820 workers resulted in negative determinations.

The number of workers applying for and receiving trade readjustment allowances was 22,400 in FY 1999. Expenditures for such benefits were $214 million in FY 1999. The Department of Labor provided training, job search, and relocation allowances valued at in excess of $94 million in FY 1999. The number of workers receiving these payments was 26,000 in FY 1999. In addition, $19 million was expended for 2500 additional workers under NAFTA Trade Adjustment Assistance and $37 million was expended for training 8200 workers under the NAFTA Trade Adjustment Assistance training program.

b. Assistance for Firms and Industries

The Planning and Development Assistance Division in the Department of Commerce's Economic Development Administration (EDA) administers the Trade Adjustment Assistance (TAA) program for firms and industries. This program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, through September 30, 2001. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers.

Under the TAA program, EDA funds a network of 12 Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 1999, EDA provided $11.0 million in funding to the TAACs. That amount included $1.5 million in defense adjustment funding, which is used to assist trade impacted firms that also have been impacted by defense downsizing or are located in areas that have been impacted by defense downsizing.

A TAAC will assist a firm in completing its petition for certification of eligibility. In FY 1999, EDA certified 173 firms under the TAA program. Once EDA certifies the firm, the TAAC will assist the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 1999 the APRC approved 149 adjustment proposals from certified firms.

After the adjustment proposal is approved by the APRC, the firm may request technical assistance from the TAAC to implement its strategy. Using funds provided by the TAA program, the TAAC will contract with consultants to provide the technical assistance tasks identified in the firm's strategy. The firm must typically pay 50 percent of the cost of each consultant contract. However, the maximum amount of technical assistance available to a firm under the TAA program is $75,000. Common types of technical assistance requested by firms include the development of marketing materials, identification of new products that the firm could produce, ISO 9000 certification, and identification of appropriate management information systems.

EDA also may provide technical assistance for industry-wide projects. In recent years EDA has opted to use the limited program resources to support the TAACs and their outreach efforts. However, in FY1999 EDA approved a technical assistance grant to help the Alaskan salmon fishing industry prepare a strategic marketing plan. Funds for this project were transferred to EDA from the U.S. Department of Agriculture.

On August 17, 1999, President Clinton signed into law legislation creating the Emergency Steel Loan Guarantee Act of 1999 and the Emergency Oil and Gas Guaranteed Loan Program Act (Public Law 106-51). The program has been structured to fulfill the two goals laid out in the legislation by Congressional sponsors: to assist steel and oil/gas firms injured by the import crises and to protect government funds by providing sound loan guarantees. The January 31, 2000 deadline for applications seeking this assistance has been extended to February 28, 2000. No funds for this program were disbursed in 1999.

11. Generalized System of Preferences

The Generalized System of Preferences is a program that grants duty-free treatment to specified products that are imported from more than 140 designated developing countries and territories. The program began in 1976, when the United States joined 19 other industrialized countries in granting tariff preferences to promote the economic growth of developing countries through trade expansion. Currently, more than 4,400 products or product categories (defined at the eight-digit level in the Harmonized Tariff Schedule of the United States) are eligible for duty-free entry from countries designated as beneficiaries under GSP. In 1997, an additional 1783 products were made duty free under GSP for countries designated as least developed beneficiary developing countries (LDBDCs).

The premise of GSP is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and liberalization. In its current form, GSP is designed to integrate developing countries into the international trading system in a manner commensurate with their development. The program achieves these ends by making it easier for exporters from developing economies to compete in the U.S. market with exporters from industrialized nations while at the same time excluding from duty-free treatment under GSP those products determined by the President to be "import sensitive." The value of duty-free imports in 1998 was approximately $16 billion.

In addition, the U.S. GSP program works to encourage beneficiaries to eliminate or reduce significant barriers to trade in goods, services, and investment, to afford all workers internationally recognized worker rights, and to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive intellectual property rights.

An important attribute of the U.S. program is its ability to adapt, product by product, to changing

market conditions and the changing needs of producers, workers, exporters, importers and consumers. Modifications can be made in the list of articles eligible for duty-free treatment by means of an annual review. The process begins with a *Federal Register* notice requesting the submission of petitions for modifications in the list of eligible articles. Those that are accepted are made subjects of public hearings, preparation of a U.S. International Trade Commission study of the "probable economic impact" of granting the petition, and a review of all relevant material by the GSP interagency committee. Following completion of the review, the President announces his decisions in the spring on which petitions will be granted.

Although the program was originally authorized for ten years and subsequently reauthorized for eight years, Congress has recently renewed the program for only brief periods of one or two years. The GSP program has lapsed temporarily several times – September 30, 1994; July 31, 1995; May 31, 1997, June 30, 1998, and June 30, 1999. Each time it was reauthorized after a delay and applied retroactively to the previous expiration date, thus maintaining the continuity of the program benefits. In December 1999 the President signed legislation reauthorizing the program until September 20, 2001.

One major change was included in the 1996 reauthorization. Congress authorized the extension of GSP eligibility to an additional 1,895 products provided they are imported only from LDBDCs and as such are determined by the Administration not to be import sensitive. The President in 1997 determined that 1,783 of the proposed 1,895 articles could be made eligible for GSP. The intent of this change in the GSP program was to provide exclusive benefits to this class of countries which so far and with few exceptions, have not been major gainers from the program.

The 1998 Annual GSP Product Review was initiated in June 1998. Petitions for modifications in the eligibility status of GSP products were requested and processed. A Presidential Proclamation announced determinations in June 1999. However, due to the temporary suspension of the program, benefits on a retroactive basis were not authorized until December. In December 1999 the initiation of the 1999 Annual GSP Product Review was announced. The review is to be completed in the spring of 2000.

In addition to the product review, several country practice petitions were submitted dealing with intellectual property rights, worker rights, and expropriation. USTR announced its acceptance of petitions alleging intellectual property rights deficiencies in Armenia, the Dominican Republic, Kazakhstan, Moldova, Ukraine, and Uzbekistan. Eligibility reviews were initiated based on these petitions. In February 2000 USTR also solicited public comment on the USTR's intention to recommend to the President that GSP benefits be withdrawn from Belarus due to its failure to take steps to afford international recognized worker rights, as required by the GSP statute.

In 1999 the President also reinstated Mauritania as a Least Developed Developing Country GSP beneficiary and designated Gabon and Mongolia as GSP beneficiary countries.